

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VEERJI EXPORTS,	:	22 Civ. 03661 (LGS)
	:	
Plaintiff,	:	
	:	
-against-	:	DECLARATION OF
	:	MICHAEL S. FISCHMAN
CARLOS ST MARY, INC., CARLOS ST MARY	:	IN OPPOSITION TO
and BRINK’S GLOBAL SERVICES USA, INC.,	:	MOTION TO DISMISS
	:	
Defendants.	:	
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Michael S. Fischman declares, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, that the following is true and correct:

1. I am an partner in the law firm of Phillips Nizer LLP, attorneys for Plaintiff Veerji Exports (“Veerji”) in the above-captioned matter. I respectfully submit this Declaration in opposition to Motion to Dismiss the Complaint and Compel Arbitration filed herein by defendant Brink’s Global Services USA Inc. (“Brink’s”).

2. Annexed hereto as Exhibits “1 through 31” are true and correct copies of the documents in this action which are relied upon and cited in Veerji’s memorandum of law, submitted herewith in opposition to the Brink’s motion. The documents attached hereto at Exhibits 1 through 29 are admissible evidence because on a motion to dismiss, the Court may consider “all relevant admissible evidence submitted by the parties and contained in the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, and draw all inferences in favor of the non-moving party, which in this case is Veerji. *Myer v. Uber Techs, Inc.*, 863 F.3d 66, 73 (2d Cir. 2017). In this case, the documents that are most relevant to the motion come from Brink’s own records and data.

3. Brink's produced its first documents to Veerji on September 15, 2022, consisting of 502 pages of PDF images of emails, computer screens from internal Brink's tracking systems and images from surveillance videos.¹ After Veerji's counsel noted some obvious deficiencies in the production (see Exhibit 31), Brink's produced additional pages on October 7, 2022. We are told that the Brink's production still is not complete.

4. The documents produced by Brink's and addressed in the accompanying memorandum are:

A. Screenshots of Brink's internal data from its ATLAS system regarding house airway bill 99120006815 ("HAWB 6815"), with highlighting added to identify information referenced in the Veerji memorandum of law, annexed at Exhibit 1. The documents were produced by Brink's at DEFT-BRINKS-00003-13.

B. Screenshots of Brink's internal data from its BITS system regarding HAWB 6815, with highlighting added to identify information or entries referenced in the Veerji memorandum of law, annexed at Exhibit 2. The documents were produced by Brink's at DEFT-BRINKS-000014-17.

C. Screenshots of Brink's internal data from its ATLAS system regarding house airway bill 11021207621 ("HAWB 7621"), with highlighting added to original to identify information referenced in the Veerji memorandum of law, annexed at Exhibit 3. The documents were produced by Brink's at DEFT-BRINKS-00417-423.

¹ Brink's also withheld documents and information concerning how the shipment at issue was wrongly released to co-defendant Carlos St Mary on August 4, 2021, claiming that such documents "may" be privileged. Brink's also refused to identify how many other instances over three years that its New York City office was instructed to place a hold on delivery, and in how many of those cases Brink's released the shipment without approval of the shipper. (See Brink's Response to Veerji's Document Request dated September 15, 2021, Exhibit 28, and Brink's Response to Veerji's First Set of Interrogatories, dated September 15, 2022, at Exhibit 29.) Brink's alleges in its motion papers that the number of shipments made by Veerji through Brink's is somehow relevant, regardless of whether Veerji ever requested a hold on delivery for any of those shipments. We expect that Brink's will be supplementing its response to these discovery requests.

D. Screenshots of Brink's internal data from its BITS regarding HAWB 7621, with highlighting added to original to identify information referenced in the Veerji memorandum of law, annexed at Exhibit 4. The documents were produced by Brink's as DEFT-BRINKS-00424-425.

E. Emails from June 22, 2021 to June 29, 2021, produced by Brink's concerning the shipment under HAWB 6815, stamped as DEFT-BRINKS-0000039-69, annexed at Exhibit 5. According to these emails, as of June 23, 2021, Frank Rosner, Account Executive at Brink's, had "No Record" of a hold on the Veerji shipment under HAWB 6815, including the "shipper instruction letter." BVC personnel responded, advising that the "Hold is marked in BITS", and sent a screenshot of the BITS hold. BVC also advised that the hold was included in "the HAWB instructions" section of which a copy was also supplied. (*Id.*, DEFT-BRINKS-0000051-56.)

F. A copy of Brink's notice dated March 11, 2021, to BGS Affiliates, transmitting a "checklist to ensure all documentation is in order before exporting to the U.S.", produced by Brink's at DEFT-BRINKS-0000059-60, and included in Exhibit 5, is separately attached here at Exhibit 6.

G. Emails dated June 22, 2021, between Brink's personnel and Carlos St Mary, concerning change of "the label address for Houston Branch Delivery", stamped as DEFT-BRINKS-00150-51, annexed as Exhibit 7.

H. Emails dated June 23, 2021, between Brink's personnel and Carlos St Mary, wherein Brink's advised Mr. St Mary that, *inter alia*, "[w]e are still waiting for release instructions from India", stamped DEFT-BRINKS-00172-75, annexed as Exhibit 8. A copy of a screenshot from a June 24, 2021, WhatsApp message chat between Veerji and Carlos St Mary,

forwarding one of the email messages at Exhibit 8, stamped as PL-000386-88, is annexed a Exhibit 9, together with:

I. Emails dated July 26, 2021, stamped DEFT-BRINKS-00238-43, annexed is Exhibit 10.

J. Emails dated July 27 and 28, 2021, between Brink's personnel and Carlos St Mary, stamped DEFT-BRINKS-00280, annexed at Exhibit 11.

K. Emails dated July 28, 2021, stamped DEFT-BRINKS-0028-89, annexed at Exhibit 12.

L. Emails dated July 29 and 30, 2021, stamped DEFT-BRINKS-00316-326, annexed as Exhibit 13.

M. Emails dated July 29 and 30, 2021, stamped DEFT-BRINKS-00327, annexed at Exhibit 14.

N. An email exchange between Brink's personnel and Carlos St Mary, between July 30 and August 2, 2021, stamped DEFT-BRINKS-00347-349, annexed at Exhibit 15.

O. An email exchange between Brink's personnel and Carlos St Mary dated July 30 and August 2, 2021, stamped DEFT-BRINKS-00350-352, annexed at Exhibit 16.

P. An email exchange between Brink's personnel and Carlos St Mary dated July 30, August 1 and 2, 2021, stamped DEFT-BRINKS-00359-361, annexed at Exhibit 17.

Q. Internal Brink's emails from June 22, 2021, to August 3, 2021, stamped DEFT-BRINKS-00405-413, annexed at Exhibit 18.

R. Email exchange between Brink's personnel and Veerji personnel dated August 3, 2021, stamped DEFT-BRINKS-00366-66, annexed at Exhibit 19.

S. Screenshots of surveillance video from August 4, 2021, at the Brink's office at 580 Fifth Avenue, New York, New York, provided as part of the Brink's document production on September 15, 2022, annexed at Exhibit 20. I have viewed the surveillance videos as later produced by Brink's and they appear to show Carlos St Mary and an unknown woman arrive at the Brink's office at approximately 9:58 am on August 4, 2021, and leave (apparently with the Veerji Diamonds) at approximately 10:02 am.

T. Emails to and from BVC regarding "HAWB 99120006815/Carlos St Mary Inc.", ending with a September 24, 2021, email to "Team" advising:

As per Talk with Shipper They want the shipment back to India.
So please kindly advise Your total charges from NYC to India and
all you local Charges and after our confirmation only will send the
shipment back.

The email chain, annexed at Exhibit 21, includes numerous June 2021 emails from BVC to Brink's concerning the hold on delivery.

U. An email dated September 27, 2021, from Darshan Sanghavi (Veerji) to BVC Surat, stamped DEFT-BRINKS-00468, annexed at Exhibit 22.

V. Emails dated October 6-15, 2021, to and from Darshan Sanghavi (Veerji) concerning the Veerji Diamonds, stamped DEFT-BRINKS-00470-482, annexed as Exhibit 23.

W. Emails dated October 18, 2021 between Brink's personnel, including Corporate Counsel Gita Athreya, and Veerji's Darshan Sanghavi, stamped PL 000330-334, are annexed at Exhibit 24.

5. As detailed in the accompanying Affidavit of Darshan Sanghavi, BVC supplied an email chain concerning BVC communications with Brink's about the lost Veerji Diamonds, a copy of which is annexed as Exhibit 25 and stamped PL000517-533. (These documents were not produced by Brink's with its production of documents on September 15, 2022.) The emails

to and from BVC regarding “HAWB 99120006815/Carlos St Mary Inc.”, include an October 7, 2021, email from Brink’s affiant Yogesh Bansode to Brink’s personnel in which Bansode writes: “Even after HOLD instructions it released so you need to retrieve the shipment and get it into your custody.” (PL000517.) On October 7, 2021, Bansode wrote to the Brink’s Senior Director of Diamonds & Jewelry:

I need you intervene. The shipment was on hold and due to overnight it was delivered by your team. Now customer is chasing us as they have not received the payment yet. (PL000522.)

A few days earlier, on October 5, 2021, another BVC employee noted that “shipper [Veerji] may claim the amount recovery from us for this shipment being released to consignee.” (PL000524.)

6. On October 7, 2021, Brink’s produced these emails, and others, including emails between Frank Rosner and Brink’s affiant Sean Branigan dated July 26, 2021, and referred to above, wherein Rosner notes in response to a request to have a viewing at Brink’s New York office, that “the whole thing looks suspect and shady.” The newly-produced emails referenced in the accompanying memorandum, stamped DEFT-BINKS-000505-508, are annexed at Exhibit 26.

7. A copy of the HAWB 6815, provided by BVC and referred in Exhibit 5 hereto, is annexed separately at Exhibit 27.

8. A copy of Defendant Brink’s Responses to Plaintiff’s First Set of Document Requests, dated September 15, 2022, is annexed at Exhibit 28.

9. A copy of Defendant Brink’s Responses to Plaintiff’s First Set of Interrogatories, dated September 15, 2022, is annexed at Exhibit 29.

10. A copy of the July 2021 bank statements for Carlos St Mary Inc., produced in response to a subpoena to Bank of America and stamped BOA00001-4 and 11-14, are annexed as Exhibit 30.

11. Letter, dated September 19, 2022, from Michael S. Fischman to Abad Z. Bhuyan, is annexed as Exhibit 31.

Dated: October 12, 2022
New York, New York

Michael S. Fischman